Cri A 2433/98

XII-189 / (Jail)
C. J. P. R. 11/94/2000

CF0000059751

D03 (Cri)

Regd 2193

APPEAL OF PRISONER

No. 8200 Name राधेश्याम

Father's name गणेश मेहर साकिन बिनारी थाना पलारी

Residence जिला रायपुर (म0प्र0) Age 25 साल

Sentenced to आजीवन कारावास जुर्माना 1000/- On 05/08/98

Under section 302 भा0दं0वि0 by माननीय प्रथम अपर सत्र न्यायाधीश बलौदाबाजार जिला रायपुर (म0प्र0)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received 24/08/98

3 Date on which Appeal sent 31/8/98

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 8200 Name राधेश्याम पिता गणेश मेहर

Confined in केन्द्रीय Jail रायपुर (म0 प्र0)

No. 2720/विधि/98 Dated 31/8/1998

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अतिरिक्त पंजीयक महोदय, माननीय उच्च न्यायालय मध्य-प्रदेश जबलपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न:- सत्र प्रक0 क्रमांक- 498/97 की
प्रमाणित प्रतिलिपि ।

Superintendent,
Central Jail, Raipur. (M.P.)

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
15 SEP 1998
Reg. No. 196
Recept Clerk
High Court Jabalpur

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 2433/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 2433 of 1998

Appellant : Radheshyam

Vs.

Respondent : State of Madhya Pradesh

Ku. Sangita Mishra, learned counsel for the appellant.

Shri U.N.S Deo learned additional Public Prosecutor and Shri D.K. Gwalre learned Dy. GA for the respondent/State.

ORAL JUDGMENT
(22.04.2006)

Per L.C. Bhadoo , J

The appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure against the judgment dated 5.8.1998 passed by Additional Session Judge Baloda Bazar in Session Trial No. 498/1997 convicting him under section 302 of the Indian Penal Code and sentencing to undergo imprisonment for life and pay fine of Rs. 1,000/- , in default of payment of fine to further undergo RI for six months.

2. Case of the prosecution is that on 25.11.1997 the accused returned from Bhopal along with his family members i.e. wife Nirasha Bai and child and after leaving his wife at village Goda he came to his house. On 26.11.1997. When brother of the accused namely Jageshwar PW-6

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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returned from agricultural field at about 2 p.m. he saw the accused along with his family members in his house and thereafter he went to the pond for taking bath. He returned from the pond at 5 p.m. and saw the dead body of Nirasha Bai in her room. Accused was holding sickle in his hand and the child of the accused was there. The child informed him that accused had committed the murder of his mother. On inquiry from the accused he did not disclose anything. Thereafter, the matter was reported to police station Palari. Station House Officer R.K. Lalwani (PW-10) registered the FIR Ex. P-16 and proceeded for the place of incident. After giving notice Ex. P-6 to the Panchas the Investigating Officer conducted inquest on the body of Nirasha Bai and prepared inquest report Ex. P-7. Blood stained and plain soil was taken into possession under Ex. P-9 from the place of occurrence. Thereafter, dead body was sent for post mortem examination to Primary Health Centre Palari under Ex. P-1-A where Dr. F.R. Nirala (PW-1) conducted the post mortem examination and submitted the post mortem report Ex. P-1.

3. During police custody accused gave memorandum Ex. P-10 to the Investigating Officer PW-10 in pursuance of which he got recovered grinding stone, sickle and pipe under P-11. Thereafter, recovered articles were sent to Forensic Science Laboratory for examination from where report Ex. P-23 was received. After completion of the investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazar who in turn committed the case to the Court of Session Judge, Raipur from where learned Additional Session Judge received the case on transfer for trial.

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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4. Prosecution in order to establish the charge against the accused/appellant examined as many as 11 witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he pleaded his innocence and false implication in the crime in question and stated that he was not at the residence and after his return he saw that his wife was dead.

5. Learned Additional Session Judge after hearing learned counsel for both the parties has convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

6. We have heard Ku. Sangita Mishra learned counsel for the appellant and Shri U.N.S. Deo Additional Public Prosecutor with Shri D.K. Gwalre Dy. GA for the respondent State.

7. Homicidal death of Nirasha Bai is not in dispute.

8. As far as involvement of the accused/appellant in the crime in question is concerned, in this case almost all the witnesses have turned hostile. PW-6 Jageshwar, brother of the accused who lodged the FIR Ex. P-16 has also turned hostile and even in the cross examination by the Public Prosecutor he has denied the portion of the FIR P-16 and stated that he did not see the accused holding sickle in his hand and the accused had not told him about the death of Nirasha Bai. He has further stated that accused was standing on the gate and there was nothing in his hand. Other witnesses i.e. PW-3 Phoolvati, PW-4 Maniram, PW-5 Sukhiram, PW-6 Jageshwar, PW-7 Shiv Kumar, PW-9 Ganesh Ram and PW-11 Punibai have turned hostile and not supported the case of the prosecution.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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Even PW-4 Maniram and PW-5 Sukhiram have not supported the case of the prosecution to the extent that accused gave information to the SHO PW-10 and they have stated that even recovery was not effected at the instance of the accused. Moreover, even if the recovery of the weapon is established on the evidence of the Investigating Officer PW-10 R.K.Lalwani, the accused cannot be convicted on the basis of said recovery because there is no serologist's report to show that the blood present on sickle, grinding stone and pipe was the human blood and it was of the blood group of the deceased. There is no evidence to show that the accused was in the house at the time of commission of the crime in question. The incident is said to have taken place during 2 to 5 p.m. and the accused has stated that he was not at his residence; therefore, for the foregoing reasons we are of the considered opinion that there is not even iota of evidence to connect the appellant with the crime in question.

9. Thus the finding of the trial court convicting the appellant under section 302 of the IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1000/-, in default to further undergo RI for six months, cannot be sustained.

10. In the result the appeal succeeds. Impugned judgment of the trial Court is set aside. Appellant is acquitted of the charge leveled against him. He is directed to be set at liberty forthwith if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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